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FILED

OCT - 5 2009

BANKRUPTCY COURT
OAKLAND, CALIFORNIA

9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 DIVISION 4, OAKLAND

12 In re:

13 Harjinder Singh and Preet Kiran Kaur Johal
14 Debtors.

Case No. 09-45394

Chapter 7

Adversary Proceeding No.: 09-4412

15
16 Bai Lin Zhou, an individual,
17 Plaintiff,

18 vs.

19 Harjinder Singh and Preet Kiran Kaur Johal
20 Defendants.

21
22 **CREDITOR'S AMENDED COMPLAINT TO DETERMINE DISCHARGEABILITY OF
23 CLAIM**

24 COMES NOW, Plaintiff Bai Lin Zhou, Creditor of the above-referenced Debtors
25 Harjinder Singh and Preet Johal, and alleges as follows:

26 **JURISTITION**

27 1. Jurisdiction over this action exists pursuant to 28 U.S.C. section 157 and
28 28 U.S.C. section 1334 and venue is proper pursuant to 28 U.S.C. section 1409.

2. This adversary proceeding is a core matter pursuant to 28 U.S.C. section 157.

PRELIMINARY ALLEGATIONS

3. This case commenced by Debtors filing for relief under Chapter 7 under Title 11 of the United States Code on June 18, 2009.

4. Plaintiff is a Creditor in the above-entitled Chapter 7 Debtors.

5. The Debtors, Harjinder Singh and Preet Johal, are individuals who are residents of the State of California at 469 Riviera Drive, Union City, California, 94587. Union City, California is located in Alameda County, California. Alameda County is within the Oakland Division of the Northern District of California.

GENERAL FACTUAL ALLEGATIONS

6. Plaintiff Bai Lin Zhou is a 43-year-old male resident of Alameda County, California, who worked as a mechanic for Debtors and business entities owned by them from approximately January 17, 2005 through January 20, 2006. Plaintiff's duties throughout this employment qualified him as eligible for overtime (i.e., nonexempt) and meal and rest breaks under applicable California State laws.

7. When he was hired, Plaintiff was told by Debtors that he was an hourly employee at \$25.00 per hour. Several weeks after being hired, Debtors informed Plaintiff that he was to be paid a flat rate of \$1,200.00 per week, but that Debtors would be required to withhold \$200.00 per week from his paycheck in order to satisfy State and Federal income tax withholdings. Plaintiff understood this to mean that the weekly amount of \$200.00 would be withheld to cover his share (as opposed to the employer's share) of taxes he would owe to the State and Federal governments for his earnings as an employee.

1 8. On information and belief, Debtors' representation that \$200.00 was
2 being withheld to pay taxes was false. Debtors failed to disclose to Plaintiff that no
3 taxes were actually being paid to any governmental entity for Plaintiff's work.

4 9. On information and belief, Debtors represented to Plaintiff that he was
5 not entitled to overtime pay, which was false. Debtors also required Plaintiff to work
6 six days per week.

7 10. On information and belief, Debtors represented to Plaintiff that he was
8 not to take meal or rest breaks because of the amount of work that needed to be done.

9 11. For approximately the next year, Plaintiff was paid \$1,000.00 per week,
10 regardless of the amount of hours worked. On a regular basis he worked more than
11 eight hours in one day, and rarely was able to take full meal and rest breaks. All the
12 while he utilized and presented to Debtors a timecard showing the hours he worked.

13 12. In December 2005, Plaintiff requested his W-2 statement for tax filing
14 purposes. Debtors refused to provide the W-2, claiming that Plaintiff was an
15 Independent Contractor. Plaintiff denied that he was an Independent Contractor.
16 Plaintiff requested his W-2 statement several more times; however, it was never
17 furnished by Debtors.

18 13. On or about January 10, 2006, Debtors provided Plaintiff with an
19 Independent Contractor agreement dated January 10, 2005 (i.e., backdated by one
20 year), which inaccurately reported his salary as \$1,796.15 per week, rather than
21 \$1,000.00.

22 14. Plaintiff was concerned about the misrepresentative nature of the
23 proposed agreement, including the falsified date, the falsified salary information, and
24 the falsified employment status information, as well as the consequences for his own
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1 personal income tax payments. This document would have exposed Plaintiff to
2 several hundreds of dollars per month of back owed taxes for the term of his
3 employment. Therefore, Plaintiff informed Debtors that he was uncomfortable signing
4 the document.

5
6 15. Also, on or about January 2006, Plaintiff was presented a Limited
7 Partnership Agreement and pressured to sign it, so that Plaintiff would be responsible
8 for his own income tax liability and would not be owed overtime, or meal and rest
9 break back pay. Plaintiff declined.

10 16. Debtors again provided an Independent Contractor Agreement in
11 January 2006, and instructed Plaintiff to sign the document or be terminated.

12 17. When Plaintiff refused to sign the fraudulent, back-dated agreement, he
13 was terminated.
14

15 18. Plaintiff timely filed a claim with the Employment Development
16 Department for unemployment insurance payments, which, on information and belief,
17 were awarded based on an hourly rate of \$25.00. Plaintiff also timely filed a claim for
18 unpaid wages with the Department of Labor Standards Enforcement, which was
19 voluntarily dismissed by Plaintiff to pursue private litigation.
20

21 19. Plaintiff had to later pay back-owed taxes not paid by Debtors, leaving
22 him with much less money per hour than he was informed he was being paid for his
23 work.

24 20. On or about October 2006, Plaintiff made a written demand for wages
25 earned and unpaid, as well as monetary damages for his termination in violation of
26 public policy, but Debtors failed to and refused to pay the same.
27
28

1 21. Due to the failure and refusal of Debtors to pay Plaintiff the amount due
2 him, he was forced to hire counsel and to file suit in State Court against Debtors on or
3 about December 2006 to recover the monies due. The State Court complaint
4 contains allegations of California Labor Code violations, wrongful termination, unfair
5 business practices, and conversion.
6

7 22. Plaintiff has been forced to zealously litigate his State Court case over
8 the past approximately three years and has incurred reasonable attorneys' fees and
9 costs in connection with the attempt to collect the wages, penalties, interest, and
10 monies alleged to be owed from Debtors.

11 23. Debtors hired and released four different sets of counsel in a mere two
12 and one-half year period, and were representing themselves, *pro se*, at the time they
13 filed bankruptcy on June 18, 2009.
14

15 **FIRST CLAIM FOR RELIEF**
16 **WILLFUL OR MALICIOUS INJURY TO THE CLAIMANT'S PROPERTY**
17 **11 U.S.C. SECTION 523(a)(6)**

18 24. Plaintiff re-alleges and incorporates by reference the allegations in the
19 preceding paragraphs as if they were set forth again herein.

20 25. At the time Debtors refused to pay the wages due to Plaintiff, Plaintiff
21 had earned, owned and had the right to possess the unpaid wages by regularly
22 working overtime and by being prevented from taking meal and rest breaks.

23 26. Debtors willfully and without legal justification interfered with Plaintiff's
24 right to own and possess his wages by failing to and refusing to pay Plaintiff.
25

26 27. The exact amount of those wages is capable of calculation from
27 information from Plaintiff or from Debtors' records.
28

28. In refusing to pay wages that were earned to the Plaintiff, Debtors unlawfully and intentionally took and converted the labor and property of Plaintiff to his own use, in violation of California Civil Code section 3294. At the time the conversion took place, Plaintiff was entitled to immediate possession of the amounts of wages payable. This conversion was oppressive, malicious, fraudulent, and concealed by the Debtors from Plaintiff.

29. Plaintiff has been injured by this willful and malicious conversion of Plaintiff's property and is entitled to all monies converted by the Debtors with interest thereon.

SECOND CLAIM FOR RELIEF
FRAUD
11 U.S.C. SECTION 523(a)(2)(A)

30. Plaintiff re-alleges and incorporates by reference the allegations in the preceding paragraphs as if they were set forth again herein.

31. Debtors represented to Plaintiff that he was an hourly employee at \$25.00 per hour. Then, shortly thereafter, Debtors represented to Plaintiff that he would be paid a flat rate of \$1,200.00 per week. Plaintiff believed he would continue to be an employee.

32. Debtors informed Plaintiff that Debtors would be withholding \$200.00 per week to pay employment taxes; thus, Plaintiff would earn \$1,000.00 per week.

33. Debtors informed Plaintiff that Plaintiff could not earn any overtime pay but that he was to work six days per week. Debtors also informed Plaintiff that Plaintiff was not entitled to take meal or rest breaks.

34. These representations made by Debtors were false and unlawful.

1 35. Plaintiff, however, believed and relied on the representations made by
2 Debtors and did not hold any monies back to pay employment taxes, did not get paid
3 for overtime hours worked, and did not take meal or rest breaks as he was lawfully
4 entitled to do.

5 36. In lieu of complying with the wage and hour laws of the State of
6 California, Debtors made false representations and employed Plaintiff under false
7 pretenses, which proximately caused damage to Plaintiff in that Plaintiff had to
8 retrospectively pay taxes on a wage that he reasonably believed was his gross wage.
9 Plaintiff was also damaged because he regularly worked more than eight hours in a
10 day and more than 5 days per week, but was not paid for this overtime. Further,
11 Plaintiff was not allowed to take full meal or rest breaks as he should have been
12 entitled to do, and was also not paid for an hours worth of wages for each missed
13 break.
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16 37. Thus, Debtors' debt to Plaintiff is a debt for money obtained by false
17 pretenses, a false representation, and/or actual fraud.

18
19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for entry of judgment as follows:

21 1. For a judgment that Debtors are indebted to Plaintiff in the amount
22 approximately \$150,000.00 plus interest at the rate of 10% per annum, according to
23 proof;
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25 2. For a determination and judgment that said indebtedness of Debtors to
26 Plaintiff is not dischargeable under Bankruptcy Code Section 523(a)(2), 523(a)(6), or
27 both;

28 3. For costs of suit incurred herein; and

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4. Such other and further relief as the Court deems just and proper.

DATED: October 1, 2009



Micha Star Liberty
LIBERTY LAW OFFICE
Attorney for Bai Lin Zhou